as the deposit has produced. There will be a formal account on this footing. Upon the plaintiff paying to the defendant what shall be certified to be due to him, within one month of the Registrar's certificate, the defendant must reconvey the mortgaged property. I need not deal with any other part of the decree (such minutes are to be submitted) except the Order with reference to costs. A mortgagee is entitled by contract to all the costs of a redemption suit unless by signing against the terms of that contract he has merited the condemnation of the Court. In such a case he forfeits his own costs and may be made to pay those of the mortgagor. An order of this sort has been made where a mortgagee refused an offer rightly made to redeem him. See *Squire* v. *Pardoe* (1891 W.R. 100). Other authorities are *Charles* v. *Jones* (33 Ch. D. 84), *Heath* v. *Chinn* (98, L.T. 855), *Rourke* v. *Robinson* ([1911] Ch. D. 480) and *Graham* v. *Seal* (L.T. Vol. 119, 526). Having regard to these cases I feel constrained to order the defendant to pay the costs of this action

Judgment accordingly.

Solicitors: *Allen & Gledhill; Donaldson & Burkinshaw.*

---

[135] F.M.S. REPORTS

SOCKALINGAM CHETTY v. NAGAPPA PILLAY

[A.C.J. (Aitken J.) February 28, 1936]

[Negri Sembilan Magistrate's Civil Appeal No. 25 of 1935]

Civil Procedure Code (Cap. 7), s.241 — Decree satisfied out of Court — Payment not certified or recorded.

It is not open to the Court to enquire into the fact of payment of a decree not certified or recorded as provided in section 241 of the Civil Procedure Code even though fraud is alleged on the part of the judgment creditor.

M. E. A. Farr for the appellant.

E. Jeff for the respondent.

Aitken J.: Section 241 of the Civil Procedure Code provides that a payment which has neither been certified by the judgment creditor nor recorded by the Court at the instance of the judgment debtor, shall not be recognised as a payment of the decree by the Court executing the same. This section has frequently been considered by the Indian Courts, and it seems to have become settled law that the Court is bound to refuse to inquire into any alleged payments which are uncertified and unrecorded, even though fraud is alleged on the part of the judgment creditor. In other words the section must be taken to mean what he says, and the language in which it is couched is clear and uncompromising.

Now in this matter the learned Magistrate not only investigated an alleged payment by the judgment debtor which was neither certified nor recorded, but proceeded to accord it full recognition and to refuse the judgment creditor's application for an order that the decree in question should be executed. In doing so he acted contrary to the express terms and provisions of section 241 of the Civil Procedure Code, and since the judgment debtor could only advance the alleged uncertified and unrecorded payment as a reason why the decree should not be executed, I think the learned Magistrate should have made an order for it to be executed.

This appeal is therfore allowed, and the matter remitted to the Court of the First Magistrate at Seremban for an order to be made that the decree in question be executed.

As the point on which the decision of this appeal has turned was not included in the Memorandum of Appeal, and was taken by the Court, there will be no order as to costs.

Appeal allowed.

DEWANI BIN KULOP WAKANG v. MUNAH BINTI NGAH BEDAHU

[A.C.J. (Howes J.) February 7, 1936]

[Perak Civil Application No. 21 of 1935]

Land Code, ss.107 and 237 — Appeal from Collector — Jurisdiction of Collector under s.107.

Appeals under sub-section (xii) of section 107 of the Land Code, 1926, are governed by section 237.

When a transfer, voluntarily executed, has been registered, section 107 of the Land Code, 1926, does not confer jurisdiction upon a Collector to adjudicate upon allegations made by the transferor that there has been undue influence or that the transfer should be rescinded on account of an alleged oral agreement to vary it or that there has been a breach of trust. In such cases the remedy of the transferor is to bring a suit for rescission of the contract of transfer.

S. B. Sinha for the appellant.

J. S. Chabra for the respondent.

Cur. Adv. Vult.

Howes J.: This is an appeal by way of petition against the decision of the Collector of Land Revenue, Parit, by which he ordered:

"Entry Mukim Register No. 1505 Mukim of Laiang Laiang to be registered in the name of Munah binti Dahu."

The petition was headed "Petition under section 237(iii) of the Land Code, 1926," and an objection was taken by counsel for the respondent that as the matter was dealt with by the Collector under section 107 the proper course was by way of appeal under section 107(xii).

Section 107(xii) however merely says: "From any order under this section.....an appeal shall lie to the Court." It does not "specifically prescribe" any other form of appeal, and consequently, it appears to me that appeals under section 107(xii) are to be governed by section 237, which is the section dealing with appeals under the Land Code, generally. The period during which a dissatisfied person may appeal under both sections is the same, viz. 30 days. I therefore see no substance in the objection.

The grounds of appeal shortly are:—

(a) The Collector had no jurisdiction to entertain the application of the respondent.